

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE**

FUSION ELITE ALL STARS, et al.,

Plaintiffs,

v.

Varsity Brands, LLC, et al.,

Defendants.

Case No. 2:20-cv-02600-SH-cgc

Jury Trial Demanded

DEFENDANT’S AMENDED ADR SUBMISSION

Consistent with this Court’s Plan for Alternative Dispute Resolution, the Court’s Scheduling Order (ECF No. 61) states that on or before October 23, 2020 the parties shall file a stipulation designating the specific ADR intervention the Parties have selected, the time frame within which the ADR process will be completed, and the selected Neutral. The Scheduling Order also requires the parties complete the designated ADR intervention by December 23, 2020. *See also* ADR Plan 5.5(b) (“Unless otherwise ordered, a first mediation session shall be conducted within twelve (12) weeks after the Rule 16 scheduling conference.”). This schedule was agreed to by the parties who included it in the proposed scheduling order that Plaintiffs submitted to the Court on October 7, 2020.

Even before the Court entered the Scheduling Order, Plaintiffs proposed the Hon. Layn R. Phillips (Ret.) to serve as mediator. Defendants accepted this proposal in the expectation and with the understanding that the mediation would be complete by the December 23, 2020 deadline that the parties had negotiated and that was set out in the Scheduling Order. Defendants remain ready, willing, and able to proceed on that schedule as previously agreed.

However, on October 23, 2020, the very deadline for the Parties' ADR stipulation, Plaintiffs for the first time informed the Defendants the Plaintiffs were not prepared to conduct the mediation by the December 23, 2020 deadline because they did not believe it would be productive. Plaintiffs instead proposed that the parties conduct an initial mediation session in April 2021.

After Defendants informed the Plaintiffs that their proposal did not comply with the Court's Order and was otherwise not acceptable, Plaintiffs proposed conducting an initial intervention by the date required in the Court's Order but deferring additional sessions. Defendants do not believe that Plaintiffs' proposal would be to be consistent with the District's ADR Plan, which requires that such additional sessions to "be conducted within the date for completion of ADR set forth in the Court's Scheduling or Referral Order," here December 23, 2020. *See* ADR Plan, at 4.3(b) (cited in Order, at 2). After Defendants rejected Plaintiffs' proposal, Plaintiffs suggested that the parties proceed with filing the stipulation originally proposed by Defendants. But given Plaintiffs' prior statements on that proposal, Defendants do not believe such a stipulation would be an accurate reflection of the parties' positions on participating in a good faith and productive mediation.

Of course, if Plaintiffs wish to modify the Court's Order, they should file a motion to do so. Defendants have no desire to conduct a mediation if Plaintiffs are not prepared to do so.

Accordingly, the Defendants hereby notify the Court that the parties are unable to submit the ADR stipulation mandated by the Court's Scheduling Order.

Respectfully submitted,

Dated: October 23, 2020

By: /s Matthew S. Mulqueen
George S. Cary*
Steven J. Kaiser*
**CLEARY GOTTlieb STEEN &
HAMILTON LLP**

2112 Pennsylvania Ave., NW
Washington, DC 20037
Tel: (202) 974-1500
gcary@cgsh.com
skaiser@cgsh.com

* Admitted *pro hac vice*

Adam S. Baldridge (TN #23488)
Matthew S. Mulqueen (TN #28418)
**BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, PC**
165 Madison Ave., Suite 2000
Memphis, TN 38103
Tel: (901) 577-8166
abaldridge@bakerdonelson.com
mmulqueen@bakerdonelson.com

*Attorneys for Defendants Varsity Brands,
LLC, Varsity Spirit, LLC, and Varsity Spirit
Fashion & Supplies, LLC*

By: /s/ Nicole D. Berkowitz
Grady Garrison (TN #008097)
Nicole D. Berkowitz (TN #35046)
**BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, PC**
165 Madison Ave., Suite 2000
Memphis, TN 38103
Tel: (901) 577-8166
ggarrison@bakerdonelson.com
nberkowitz@bakerdonelson.com

Attorneys for US. All Star Federation, Inc